



CITY OF JOHNSON CITY
TENNESSEE

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FCC Mail Room

OFFICE OF THE CITY MANAGER

July 14, 2011

Attn: Marlene Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington D.C. 20554

RE: WC Docket No. 11-59

Dear Ms. Dortch:

Please find enclosed a signed original and four copies of the comments of The City of Johnson City, Tennessee to be filed for the above referenced docket.

With kind regards, I am

Yours very truly,

A handwritten signature in black ink, reading 'M. Denis Peterson'.

M. Denis Peterson
City Manager

MDP/lw
Enclosures

No. of Copies rec'd 0+4
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JUL 18 2011

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Acceleration of Broadband Deployment) WC Docket No. 11-59
Expanding the Reach and Reducing the Cost of)
Broadband Deployment by Improving Policies)
Regarding Public Rights of Way and Wireless)
Facilities Siting)

COMMENTS OF THE CITY OF JOHNSON CITY, TENNESSEE

The City of Johnson City, Tennessee (hereafter, Johnson City) files these comments in response to the Notice of Inquiry (“NOI”), released April 7, 2011, in the above-entitled proceeding. Through these comments, Johnson City seeks to provide the Commission with basic information regarding its local right-of-way and facility management practices and charges.¹ The Commission should not interfere with these local policies. Johnson City has developed considerable expertise applying its policies to protect and further public safety, economic development, and other community interests. By adopting rules in this area, the Commission could disrupt this process at substantial cost to local taxpayers and to the local economy. We believe that a basic respect for federalism, a fair reading of the Constitution and the Communications Act, and an honest assessment of the Commission’s limited expertise on local land use matters all point to the same conclusion: this is no place for federal regulation.

¹ We use the term “charges” to include both any cost recovery that is part of right-of-way and facility management (such as permitting fees), as well as other compensation we may receive from communications companies for use of the rights-of-way and other facilities consistent with state and local law.

Johnson City has successfully managed its property to encourage deployment of several broadband networks to date. As a result, broadband service is available to all of the households and businesses in our jurisdiction. There is no evidence that our policies or charges with respect to placement of facilities in the rights-of-way or on City property (such as water tanks) have discouraged broadband deployment. Our community *welcomes* broadband deployment, and our policies allow us to work with any company willing to provide service. No company has cited our policies as a reason that it will not provide service. We believe our policies have helped to *avoid* problems and delays in broadband deployment by ensuring that broadband deployment goes smoothly for both the providers who follow the rules and the larger community. On the other hand, we also know that many entities seeking access to our rights-of-way and facilities would prefer to live without rules or regulations, to the great detriment of other users, abutting landowners, commuters, and the general taxpayer.

In response to the NOI, the City of Johnson City, Tennessee, provides the following information:

I. Application Procedures, Forms, Substantive Requirements, and Charges.

The Commission asks whether all necessary application procedures, forms, substantive requirements, and charges are readily available.² These items are readily available from the City's website and from City departments.

Johnson City applies the following right-of-way management and facility placement procedures. Johnson City has approved a right-of-way excavation permit policy to recover the costs of inspection for excavations and to prescribe the procedures and excavation methods that all

² NOI ¶14.

entities must follow when excavating within the City's rights-of-way and within other public ways such as trails, bikeways, and sidewalks. The Code of the City of Johnson City, Tennessee, also contains permitting provisions regarding excavations within public streets as found in Sections 119-120 of Title 16. Johnson City uses a standard franchise agreement for companies providing broadband services, when those companies desire to place infrastructure within Johnson City's rights-of-way. Johnson City leases space on its water tanks and on its communications towers for wireless facilities.

II. Sources of Delays.

The Commission asks what factors are chiefly responsible to the extent applications are not processed in a timely fashion. The Commission also asks about errors or omissions in applications.³

In Johnson City, all applications are processed in a timely manner. However, in some cases, broadband providers have begun work within Johnson City's rights-of-way prior to obtaining all of the permits needed and without proper review. In those instances, the City has had to order the unpermitted entity to stop work, until proper permits and agreements could be authorized. The company's failure to obtain permits and approvals prior to beginning work resulted in the City's having to issue a "stop work order." The parties were able to work together to remedy the situation by having the company make the proper application for permits and a franchise agreement, which were thereafter issued in a timely manner.

III. Improvements.

The Commission asks whether there are particular practices that can improve processing.⁴

³ Id.

⁴ NOI ¶¶14, 29.

Johnson City has implemented a number of practices that have improved the process. The City's website contains applications, fee schedules, the code of ordinances, and other information and forms to streamline the application process. The City has also just finished a study regarding efficiencies that can be used to aid in development and is currently reorganizing its Planning, Public Works, and Community Development Departments to centralize and streamline the development process.

IV. Permitting Charges.

The Commission seeks data “on current permitting charges, including all recurring and non-recurring charges, as well as any application, administrative, or processing fees.” Specifically, the Commission asks commenters to identify:

- the type of facilities for which such charges are assessed;
- how such charges are structured (e.g., per foot or percent of revenue in the case of rights-of-way fees),
- whether the community is subject to comprehensive state franchising or rights-of-way laws;
- whether the charges are published in advance or individually negotiated, designed to approximate market rates or merely recover costs (direct and/or indirect), and accompanied by comprehensive terms, and conditions; and
- the value of any in-kind contributions required for access or permit approval.

The Commission further asks whether such charges are related to impacts on the local community, such as pavement restoration costs for projects that involve trenching in roadways.⁵

⁵ NOI ¶17.

In Johnson City, space on water tanks and the City's communication towers is leased at market rates, after the City staff surveys rates charged in this area by both public and private entities. The leases are negotiated depending on the length of term requested, the conditions of the lease site, the necessity for the construction of accessory buildings, and other factors specific to each site. Insurance and bonding requirements are dependent on the scope of each transaction and the location of each site. The City's water tanks and communications towers each have issues regarding location, age, access, and availability of space. Some of Johnson City's communications towers are at the top of mountains that are over 3,300 feet in elevation and require special terms to address access. While all of the City's water tanks are in good condition, they vary in age, with each site able to house only certain types and amounts of equipment. For franchise agreements with companies desiring to utilize Johnson City's rights-of-way, the City uses a standard rights-of-way agreement with a flat fee to recoup the cost of administration, review, and inspection with regard to the infrastructure placed within Johnson City's rights-of-way. Each franchise agreement contains uniform provisions regarding insurance and bonding requirements, and each franchisee is subject to the City's ordinances and policies regarding excavation within Johnson City's rights-of-way. All permit fees and any fees associated with franchise agreements are used only to cover costs of staff time with regard to review, inspection, and administration. The State of Tennessee has enacted the "Competitive Cable and Video Services Act" found at T.C.A. §7-59-301 et seq. for regulation of the cable industry. No other comprehensive state franchising or rights-of-way laws are found in this state.

V. Local Policy Objectives.

The Commission asks what "policy goals and other objectives" underlie the local practices

and charges in this area.⁶

In Johnson City, our policies are designed to achieve the following:

1. Protect the health, safety, and welfare by minimizing deterioration to Johnson City's roads that accompany street cuts;
2. Address aesthetic, environmental, or historic preservation concerns;
3. Make the services offered by broadband providers and others operating within the City's rights-of-way broadly available;
4. Avoid traffic disruption;
5. Encourage the deployment of services in a responsible manner;
6. Minimize damage to public and private property; and
7. Ensure fair compensation for the use of public property.

VI. Possible Commission Actions.

Finally, the Commission asks what actions the Commission might take in this area.⁷

As noted above, Johnson City strongly urges the FCC to refrain from regulating local right-of-way management and facility placement processes. These are highly fact-specific matters, which turn on local engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other significant community concerns and circumstances. These matters are managed by local staffs with considerable expertise. Imposing a federal regulatory regime would create unnecessary costs for our community, and it would have the

⁶ NOI ¶22.

⁷ NOI ¶36.

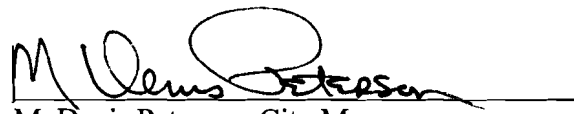
potential to undermine important local policies. Likewise, Commission regulation of charges for use of the rights-of-way could have significant impacts on the community, and may actually make it unfeasible to continue to maintain or provide important public services. If the Commission feels compelled to act in this area at all, it should limit itself to voluntary programs and educational activities, and to implementing its own recommendations in the National Broadband Plan for working cooperatively with state and local governments.

CONCLUSION

Johnson City urges the Commission to conclude that right-of-way and facility management and charges are not impeding broadband deployment. As indicated above, in Johnson City our policies and procedures are designed to protect important local interests, and have done so for many years. There is no evidence that the policies have impaired any company from providing broadband service here, and there are many reasons to believe that federal regulations would prove costly and disruptive to our community.

Respectfully submitted,

City of Johnson City, Tennessee

By: 
M. Denis Peterson, City Manager
601 E. Main Street
Johnson City, Tennessee 37601

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